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Supreme Court, U.S.
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No. 98-501

In The

Supreme Court of the United States

October Term, 1998

WYNAT DEVELOPMENT COMPANY,
An Ordinary Louisiana Partnership,
and WYNAT DEVELOPMENT CORPORATION,

Petitioners,

vs.

THE BOARD OF COMMISSIONERS OF THE
ORLEANS LEVEE DISTRICT,

Respondent.

On Petition for Writ of Certiorari to the Supreme Court of the State of Louisiana

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether the Supreme Court of Louisiana violated petitioners' Fourteenth Amendment due process rights by binding them to an opinion that construed the language of a mature statute for the first time?

2. Whether the United States Constitution obliges a state to compensate a property owner who failed to institute a timely action for compensation?

3. Whether a property owner must be given prior notice of the detrimental impact of a statute that had not been previously construed by a state supreme court before that statute may affect the property owner's rights?

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Appendix A — Acts 1975, No. 434; LSA-R.S. 13:5101 (West 1991) (Historical And Statutory Notes; LSA-R.S. 13:5111 (West 1991) (Historical And Statutory Notes) 1a

STATEMENT OF THE CASE

A. Introduction

This property dispute touching property appropriated for levee purposes comes here from the Louisiana Supreme Court. App. to Pet. for Cert. A1-A24; *Wynat Development Company v. Board of Levee Com'rs,* 97-2121 (La. 4/14/98), 710 So. 2d 783. That decision, which petitioners hope to reverse, turned on the interpretation of two prescriptive periods governing claims for property appropriated for levee purposes, one enacted in 1958, La. R.S. 9:5626, and one enacted in 1975, La. R.S. 13:5111. *See* App. to Pet. for Cert. A1. The Louisiana Supreme Court found the earlier period implicitly repealed by the later prescriptive measure, which "repealed such previous acts and parts of acts as were inconsistent with its provisions," and held petitioners' suit filed more than three years after the taking prescribed. *See id.*; *Holden v. State of Minnesota,* 137 U.S. 483, 490, 11 S. Ct. 143, 146, 34 L. Ed. 734 (1890).

Petitioners Wynat Development Company and Wynat Development Corporation assail that outcome under the takings and due process clauses of the Fifth and Fourteenth Amendments to the United States Constitution. Pet. for Cert. 7. Principally advancing a due process claim, petitioners decry what they regard as the furtive repeal of the earlier prescriptive period by the later one. They maintain that "the effective date of the repeal . . . was April 14, 1998, the date the court rendered its decision holding same to be the law." *See* Pet. for Cert. 19. They accordingly claim that when the Louisiana Supreme Court refused to make the decision prospective as to the parties, it deprived them of a vested remedy in derogation of their due process rights. (The parties agreed that the suit was timely under the old statute). Petitioners, in summary, contend that when the court below applied the later of the two statutes to the litigants before it, the court engaged in

"the type of retroactivity which is condemned by law." *Chenery Corp., infra*, 332 U.S. at 203, 67 S. Ct. at 1581.

For all of the reasons discussed below, the due process and takings issues this case presents were rejected in *Texaco, Inc. v. Short*, 454 U.S. 516, 102 S. Ct. 781, 70 L. Ed. 2d 738 (1982). In addition, the petition presents no important federal question that has been decided in a way that conflicts with the decisions of this Court. The petition should therefore be denied.

This case specifically concerns the appropriation[1] of riparian property adjacent to the Mississippi River in New Orleans at the

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1. Appropriation is a term of art in Louisiana. It refers to the taking of land for public purposes without the initiation of a formal expropriation proceeding. *Hawthorne v. La. Dept. of Public Works*, 540 So. 2d 1261, 1262 (La. App. 3rd Cir. 1989). In its more pertinent connotation for the purposes of this case, it refers to the taking of a servitude. *DeSambourg v. Board of Com'rs*, 621 So. 2d 602, 603 n.2 (La. 1993). Critically, petitioners concede that their property was riparian property, and that the taking in this case was for levee construction purposes. Pet. for Cert. 7. *Cf. Wynat*, 710 So. 2d at 784. Settled Louisiana law provides that "title to riparian lands [is] burdened with the legal servitude for levee . . . use . . ." *DeSambourg, supra*, at 606. Thus, riparian property may be appropriated at any time for levee and levee construction purposes. *Ibid.* Indeed, Louisiana law provides that all riparian property is held " '*sub modo*, i.e., subject to the right of the public to reserve space enough for levees, public roads, and the like.' " *DeSambourg, supra*, at 604 n.2. (Citation omitted). Consequently, it is said that " '[o]ver this space, the front proprietor never acquires complete dominion. It never passes free of this reservation by deed to purchaser.' " *Ibid.* There will be further discussion in text of various codal and other authorities touching on the legal servitude for levee purposes. The Court will, however, find these principles well and thoroughly examined in *Eldridge v. Trezevant, infra*, which concerned the claim of a resident of Mississippi *in this court* for just compensation under the Fourteenth Amendment. Part of Eldridge's Louisiana plantation was appropriated for the construction of a levee. He was aggrieved by the fact that, at the time of

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request of the U.S. Army Corp. of Engineers ("COE"). Respondent, the Board of Commissioners of the Orleans Levee District ("Levee District"), a political subdivision of the State of Louisiana, appropriated the property to facilitate the COE's Algiers Point Levee Setback, Levee Enlargement and Slope Pavement Project.[2] *See* App. to Pet. for Cert. A2; *Wynat Development Company v. Bd. Of Levee Com'rs*, 97-2121 (La. 4/14/98), 710 So. 2d 783, 784.

The substantive authority of the Sovereign State of Louisiana to appropriate land for the erection of levees is more than two centuries old and is utterly beyond question. *See, e.g., General Box Company v. United States*, 351 U.S. 159, 160, 76 S. Ct. 728, 730 (1956) ("Since colonial days batture has been subject to a servitude of the State for use in the construction and maintenance of levees.") *See also Eldridge v. Trezevant*, 160 U.S. 452, 463, 16 S. Ct. 345, 346-347, 40 L. Ed. 490 (1896) (noting levee servitude's origin in Code Napoleon); *Pruyn v. Nelson Bros.*, 180 La. 760, 157 So. 585, 587 (1934) ("The principle [i.e. the levee servitude]

(Cont'd)
the taking in his case, no compensation was due the owner of riparian property when the state chose to exercise its levee servitude. This court found no violation of the constitutional rights of the petitioner in the noted case in view of the "*sub modo*" quality of his title as a matter of state law. This Court accordingly denied the petitioner any monetary relief. As discussed below in text, and as further discussed in the Louisiana Supreme Court's decision in this case, one of the reforms of the Louisiana Constitution of 1974 was a new scheme of compensation to the full extent of the loss for land taken for levee purposes. *See* LSA-R.S. 38:301 (West 1989).

2. The COE maintains the levee system on the Mississippi River pursuant to the Mississippi River Flood Control Act of 1928, 33 U.S.C. § 701, *et seq*. "Once the COE selects a site for levee improvement, local governments . . . are obligated . . . to appropriate the necessary riparian property." *See DeSambourg, supra*, 604 n.5. *See also General Box Company, infra*, 351 U.S. at 160-161, 76 S. Ct. at 730.

. . . is of ancient origin."); *DeSambourg*, 621 So. 2d at 607 (noting ordinance of 1743 which commanded planters along the Mississippi to make their levees safe under penalty of forfeiture of their lands to the Crown).

Respondent is a levee board, the one generally having jurisdiction over the City of New Orleans. *See* LSA-R.S. 38:291(K)(1) (West 1989). Levee boards "construct and maintain levees, . . . and do all other things incidental thereto." LSA-R.S. 38:301(A) (West 1989).

Petitioners assert that their constitutionally protected property interests have been prejudiced by the actions of the Levee District in a constitutionally impermissible manner. "Property interests are not," however, "created by the Constitution . . ." They are "created and . . . defined by existing rules and understandings that stem from an independent source such as state law."[3] In this case, those rules and understandings pertain to the ownership of land adjacent to the Mississippi River. The Mississippi River has, of course, had an enormous influence on the development of Louisiana law, and some of that has been charming.

Article 8 of the Louisiana Civil Code of 1808, for example, provided:

> L'usage des rivages des fleuves ou riviéres navigables, est public; en conséquence chacun peut librement y faire aborder ses vaisseaux, en attacher les cordages aux arbres qui y sont plantés, y décharger ses navires, y deposer ses marchandises, y faire sécher ses filets et autres usages semblables.

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3. *Texaco, Inc. v. Short*, 454 U.S. 516, 525, 102 S. Ct. 781, 790, 70 L. Ed. 2d 738 (1982), *quoting Board of Regents v. Roth*, 408 U.S. 564, 577, 92 S. Ct. 2701, 2709, 33 L. Ed. 2d 548 (1972).

> Cependant la propriete des rivages des riviéres appartient á ceux qui out des terres joignantes.
>
> (The use of the shores of navigable rivers or creeks, is public; accordingly everyone has a right freely to bring his ships to land there, to make fast to the trees which are there planted, to unload his vessels, to deposit his goods, to dry his nets, and the like.
>
> Nevertheless the property of the river shores belong [belongs] to those who possess the adjoining lands.)

See LSA-C.C. art. 455 (West 1973) (Compiled Edition 1-2291).[4]

However, reasons considerably less charming than those that engendered article 8 of the Civil Code of 1808 countenanced the Levee District's appropriation in this case, reasons this Court has noted with more than a little sympathy in the past, as discussed below. A discussion of those reasons and of the rules and understandings they occasioned should nevertheless be prefaced by a brief explanation of the way in which Louisiana law has historically divided and qualified ownership.

For 150 years or so, Louisiana law divided ownership — "the right by which a thing belongs to someone in particular, to the exclusion of all other persons" — into perfect and imperfect ownership. *See* LSA-C.C. art. 488 (West 1973) (Compiled Edition 1-2291). Ownership was said to be "imperfect" when it was encumbered by a real right in favor of a third person, such as a servitude. *See id.* at art. 490.

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4. The current iteration of this article, article 456 of the Civil Code, states: "The banks of navigable rivers or streams are private things that are subject to public use." C.C. art. 456 (West Pamph. 1998) (Revision Comments — 1978(a)).

Subsequent revisions to the articles of the Civil Code relating to ownership discontinued the distinction between perfect and imperfect ownership. *See* C.C. art. 478 (West Pamph. 1998) (Revision Comments — 1979(b)).[5] That does not mean, however, that by the time of the taking in this case, Louisiana had ceased to recognize different species of ownership. On the contrary, the change was purely one in terminology. *Id.* at (a)-(b). At the time of the appropriation in this case, ownership could still be qualified by the existence of "a real right in favor of another person as allowed by law." C.C. art. 478 (West Pamph 1998).

The point, of course, is that the property of the petitioners in this case was encumbered by just such a real right. Petitioners have conceded that their property was riparian land. Pet. for Cert. 7 ("Petitioners were the owners of land located on the Mississippi River . . .") In Louisiana, such land is encumbered by a "predial servitude", that is, by "a charge on a servient estate for the benefit of a dominant estate." C.C. art. 646 (West Pamph. 1998).

> The owner of the servient estate is not required to do anything. His obligation is to abstain from doing something on his estate or to permit something to be done on it. He may be required by convention *or by law* to keep his estate in suitable condition for the exercise of the servitude due to the dominant estate.

C.C. art. 651 (West Pamph. 1998) (emphasis added).

By law, C.C. art. 654 (West Pamph. 1998), such riparian land is specifically burdened by the predial servitude for levees, which the law now designates a "legal public servitude." Article 665 of the Louisiana Civil Code states:

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5. It has been explained that this terminology was discontinued because "[m]odern civil codes do not draw a distinction between perfect and imperfect ownership; nor does the French Civil Code." *Id.* at (d).

> Servitudes imposed for the public or common utility, relate to the space which is to be left for the public use by the adjacent proprietors on the shores of navigable rivers, and for the making and repairing of levees, roads and other public or common works.
>
> All that relates to this kind of servitude is determined by laws or particular regulations.

C.C. art. 665 (West Pamph. 1998).[6]

In summary, the rules and understandings from which the property interests of the petitioners in this case arose enabled the Levee District to appropriate their property. Even petitioners concede that their property was land "located on the Mississippi River across from the City of New Orleans,"[7] and they do not

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6. The article just quoted dates back, verbatim, to the revised Civil Code of 1870. The prior code, the Civil Code of 1825, recognized the same servitude as article 661. LSA-C.C. art. 665 (West 1973) (Compiled Edition 1-2291). Indeed, the Civil Code of Louisiana *explicitly* mentioned the servitude "for the making or repairing of levees" as long ago as the Civil Code of 1808. *Ibid.* The rule is, however, of even more ancient origin, as *Pruyn* observed in 1934, *citing, inter alia, Morgan v. Livingston*, 6 Martin's Reports (O.S.) 19, 2 La. 9 (1819). As stated earlier, the rationale for this rule is touched on in *Eldridge v. Trezevant*, 160 U.S. at 464, 16 S. Ct. at 347, where this Court stated:

> In this state [i.e. Louisiana] so much exposed to ruinous inundations, the public have the undoubted right, on the shores of the Mississippi River, to the use of the space of ground necessary for the making and repairing of the public levees and roads. Civ. Code art. 665. It was the condition of the ancient grants of land on the Mississippi River, . . .

(Citation omitted).

7. Pet. for Cert. 7. That statement may be misleading. The property in question is in the City of New Orleans.

seem to contend that their property was taken illegitimately. Their aggrievement is rather founded on the fact that their property was taken without payment, but, as stated earlier, that fact was occasioned by the lateness of their claim in the face of an existing and even mature statute of limitations, La. R.S. 13:5111, whose title expressly mentioned "appropriation." LSA-R.S. 13:5111 (West 1991).

The relevant rules and understandings from which the property interests in this case arose now become conspicuously more relevant to the disposition of the petition. Under *Texaco, Inc. v. Short*, 454 U.S. 516, 102 S. Ct. 781, 70 L. Ed. 2d 738 (1982), petitioners were chargeable with knowledge (a) that their ownership was burdened by the legal servitude for levees; (b) that "appropriation" refers to the taking of a servitude"; and (c) that appropriation is "a mode for the state and its political subdivisions to exercise [their] levee servitude . . ." *DeSambourg*, 621 So. 2d at 604 n.2. *See also Texaco, Inc.*, 454 U.S. at 533, 102 S. Ct. at 793 ("It is well established that persons owning property within a state are chargeable with knowledge of relevant statutory provisions affecting the control or disposition of such property.") (Footnote omitted).

The reason such constructive knowledge is significant in this case is notice. La. R.S. 13:5111, the prescriptive statute on which the dismissal of the petitioners' suit rested, is entitled, "Appropriation of property by state . . . or agencies thereof; . . . prescription." LSA-R.S. 13:5111 (West 1991). La. R.S. 13:5111 became effective on September 12, 1975, eight years *before* the taking in this case. Petitioners have raised the violation of their due process rights as a reason for reversing the decision below, but since " 'notice' or 'fair warning' [i]s the analytic touchstone of due process . . . analysis," the knowledge with which the petitioners in this case may be charged is highly significant. *Quill Corp. v. North Dakota*, 504 U.S. 298, 312, 112 S. Ct. 1904, 1913, 119 L. Ed. 2d 91 (1992).

From their constructive knowledge of La. R.S. 13:5111, which was a mature statute by the time of the appropriation in this case, petitioners should have realized that there were serious risks in not bringing a timely action under La. R.S. 13:5111. As discussed below, petitioners had a number of months after the levee work in this case was completed and the damages presumably became clear to bring a timely action under La. R.S. 13:5111, but they did not.

> Their property loss was [thus] one [petitioners] could have avoided with minimal burden; it was [accordingly] their failure to file on time – not the action of [the State] – that caused the property right to be extinguished.

United States v. Locke, 471 U.S. 84, 108, 105 S. Ct. 1799, 85 L. Ed. 2d 64 (1985).

B. Facts

"The facts are not in dispute." Pet. for Cert. 7. *Wynat*, 710 So. 2d, at 784:

> On July 20, 1983, pursuant to a request by the U.S. Corp. of Engineers to furnish the necessary rights of way to construct the Algiers Point levee setback, levee enlargement and slope pavement project, [respondent], the Board of Levee Commissioners for the Parish of Orleans . . . adopted a resolution appropriating an eight-foot strip of Wynat's land located at Algiers Point for the purpose of building of cueing lane for vehicular traffic which was required to accommodate the levee setback. Notice of the appropriating resolution was given to Wynat by the Levee Board by letters dated July 26, 1983, and August 15, 1983. Attached to the July 26, 1983, letter was a map which designated the exact dimensions of the 8-ft. strip of land. In brief,

> Wynat [has] concede[d] it received written notice of the Levee Board's appropriating resolution on August 15, 1983. (Footnote omitted).

Ibid.

C. Proceedings Below

When petitioners and respondent

> could not agree on either the amount of compensation for the land actually used and destroyed or on the amount of severance and other consequential damages related to the remaining property,

Wynat, 710 So. 2d at 784, petitioner filed this action for compensation in the Civil District Court for the Parish of Orleans. It did so on April 16, 1987. In reply, the Levee Board interposed the exception of prescription, which the trial court sustained. *Ibid.* The Louisiana Fourth Circuit Court of Appeal affirmed,[8] whereupon the petitioner in this case sought, and the Supreme Court of Louisiana granted, a writ of certiorari or review. *See Wynat Development Company v. Board of Levee Com'rs for Parish of Orleans,* 97-2121 (La. 11/21/97), 703 So. 2d 634.

On April 14, 1998, the Louisiana Supreme Court issued its decision on the merits, affirming the decisions below and dismissing the suit of petitioners; it denied rehearing on June 26, 1998. *Wynat,* 710 So. 2d at 783.

D. The Nature of the Legal Controversy

The reasoning which culminated in the dismissal of petitioners' suit for compensation may have been somewhat arcane,

8. *Wynat Development Company v. Board of Levee Com'rs for Parish of Orleans,* 96-1983 (La. App. 4th Cir. 5/30/97), 696 So. 2d 163.

but at its core, the dispute between the parties was over which of two prescriptive periods applied to this suit for "just compensation." Respondent urged La. R.S. 13:5111, which in pertinent part provides as follows:

> ***Appropriation of property by state, parish, municipality or agencies thereof; attorney, engineering and appraisal fees; prescription.***
>
> A court of Louisiana rendering a judgment for the plaintiff, in a proceeding brought against the State of Louisiana, a parish, or municipality, or other political subdivision or an agency of any of them, for compensation for the taking of property by the defendant, ***other than through an expropriation proceeding***, shall determine and award to the plaintiff, . . . such sum as will . . . compensate for reasonable attorney fees actually incurred because of such proceeding. . . . ***Actions for compensation for property taken by the state, a parish, municipality, or other political subdivision or any one of their respective agencies shall prescribe three years from the date of such taking.*** (Emphasis added).

LSA-R.S. 13:5111(A) (West 1991).[9]

The foregoing statute was enacted by the Louisiana Legislature in 1975, eight years before the petitioners received a letter from the Orleans Levee District, notifying them of the appropriation of their riparian property. *See* Act 1975, No. 434 (attached as Appendix A); *see also* LSA-R.S. 13:5111 (West 1991)

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9. There is no dispute that the Orleans Levee District is a political subdivision of the state for the purposes of this statute. *Wynat,* 710 So. 2d at 789-790.

(Historical and Statutory Notes).[10] That fact is highly germane to the due process argument of the petitioners in this case for a number of reasons presently to be discussed, but primarily because

> persons are charged with knowledge of the provisions of statutes and must take note of the procedure adopted by them, . . . especially . . . with respect to those statutes relating to the . . . condemnation of land.

Texaco, Inc., 454 U.S. at 533, 102 S. Ct. at 793 n.25, *quoting North Laramie Land Co. v. Hoffman*, 268 U.S. 276, 283, 45 S. Ct. 491, 494, 69 L. Ed. 953 (1925).

Wynat nevertheless urged as the applicable prescriptive period an even older statute, LSA-R.S. 9:5626, which provided:

> Actions and claims for lands and improvements used or destroyed for levees or levee drainage purposes:
>
> When lands are appropriated for levees or levee drainage purposes, all claims and actions for *payment under Article XVI, Section 6 of the Constitution of 1921* for lands and improvements thereon actually used or destroyed for levees or levee drainage purposes shall prescribe within two years from the date on which the

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10. La. R.S. 13:5111 commences prescription on the date of the taking. When a taking occurs by appropriation, the taking becomes complete when the political subdivision adopts a resolution to that effect. *Wynat*, 710 So. 2d at 786; *Orleans Levee District v. Aurianne*, 229 La. 83, 85 So. 2d 39 (1956); *Danziger v. United States*, 93 F. Supp. 70 (E.D. La. 1950). The courts, however, say that prescription in such cases does not begin to run until the property owner has notice of the resolution. *Rivet v. State*, 93-369 (La. App. 5th Cir. 3/16/94), 635 So. 2d 295. "Wynat concedes it received written notice of the . . . resolution on August 15, 1983." App. to Pet. for Cert. A2 (footnote omitted).

> property was actually occupied and used or destroyed for construction of levees or levee drainage works . . . (Emphasis added).

LSA R.S. 9:5626 (West 1991).

La. R.S. 9:5626 was enacted in 1958 in an extra session of the legislature. *See* LSA-R.S. 9:5626 (West 1989) (Historical and Statutory Notes). Acts 1958, Ex. Sess. No. 11, § 1.

La. R.S. 9:5626 applied, under its plain language, to claims for compensation under the assessed value compensation scheme of the Louisiana Constitution of 1921, something the Louisiana Supreme Court found this suit not to be. *See* App. to Pet. for Cert. A15; *Wynat,* 710 So. 2d at 789 ("Wynat has, in fact, asserted a cause of action under this new compensation scheme found in La. R.S. 38:301; not one under art. 16, § 6 of the 1921 Constitution.") As amended by Act 165 of 1928, article XVI, § 6 of the Louisiana Constitution of 1921 provided that lands taken for levee purposes were only to be paid for "at a price not to exceed the assessed value of the preceding year . . ." *Wynat*, 710 So. 2d at 786.

The Levee District conceded that the claim of the petitioners was not prescribed if La. R.S. 9:5626 was applicable. *Wynat*, 710 So. 2d at 785 n.3. The Levee District recognized that the project was not completed until the summer of 1985, *Wynat*, 710 So. 2d at 784, and that prescription under § 5626 does not commence until the levee work is complete. *See id.* (As noted earlier, prescription under § 5111 commences, in contrast, on the date the landowner receives notice of the appropriating resolution.)

In nevertheless opposing the application of § 5626 to the facts of the present case, the Levee District made four overarching points: first, that § 5111 was enacted several years before the date of the appropriation in this case, in connection with the state's waiver of its sovereign immunity; second, that the title of the statute

explicitly referred to appropriation, which is understood to be a term of art referring to the taking of a servitude; third, that the clear and unambiguous language of the later statute, La. R.S. 13:5111, clearly encompassed the taking in this case, and fourth, that, in contrast, the clear language of § 5626 confined its application to suits under article XVI, § 6 of the Constitution of 1921. For that and other reasons rooted in the Louisiana Constitution of 1974 and in subsequent actions of the Louisiana Legislature, reasons petitioners have now "eschewed" in favor of a purely constitutional argument regarding "the temporal reach of a court adjudication that establishes new law", Pet. for Cert. 11, the Louisiana Supreme Court affirmed the dismissal of petitioners' suit. App. to Pet. for Cert. A21.

One final point deserves emphasis, since it is at the heart of the controversy in this Court. When the legislature enacted Act 434, it repealed "[a]ll laws or parts of laws in conflict herewith . . ." *Wynat*, *supra*, 710 So. 2d at 785 n.5; Acts 1975, No. 434, § 3.

In common with this court, see *Tennessee Valley Authority v. Hill, infra,* Louisiana does not favor repeals by implication, *Macon v. Costa*, 437 So. 2d 806, 810 (La. 1983). Nevertheless, Louisiana law provides that "[a] subsequent general statute dealing specifically with a particular subject supersedes and repeals inconsistent and conflicting provisions in an earlier statute." *See id.* at 809. *Cf. Eastern Extension, infra,* 231 U.S. at 332, 34 S. Ct. at 58 (statute repealing inconsistent enactments generally raises issues of legislative intent).[11] Petitioners in this case claim not to

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11. Interestingly, the Attorney General of the State of Louisiana pronounced the constitutional and then statutory predicate of § 5626, § 6 of article 16 of the Constitution of 1921, " 'no longer viable as a statute and . . . repealed by implication,' " in 1976. LSA-R.S. 9:5626 (West Supp. 1998) (citation omitted). *Cf. Wynat,* 710 So. 2d at 788 ("*See also* Historical and

(Cont'd)

have understood that La. R.S. 13:5111 superseded La. R.S. 9:5626 until the Louisiana courts declared it openly years after the taking in this case occurred. Citing Chief Justice Calogero's passing reference to La. R.S. 9:5626 in his lone dissent in *West Jefferson Levee Dist. v. Coast Const. Co.*, 640 So. 2d 1258, 1302 (La. 1993), "as an example of the lack of expression of repeal by the legislature," Pet. for Cert. 16 n.8, petitioners assert: "Because there was no specific act or expressed legislative intent to repeal La. R.S. 9:5626, petitioners' counsel was without precedent or legal authority to declare the statute dead." *See id.* at 16.

That argument is not new to this Court. *See Texaco, Inc.*, 454 U.S. at 537, 102 S. Ct. at 795-796 ("[I]t has never been suggested that each citizen must in some way be given specific notice of the impact of a new statute on his property before the law may affect his property rights.")

REASONS FOR DENYING THE WRIT

I.

THE OUTCOME IN THIS CASE REPRESENTS NEITHER AN UNCONSTITUTIONAL TAKING OF PRIVATE PROPERTY WITHOUT JUST COMPENSATION NOR A TAKING IN VIOLATION OF THE DUE PROCESS RIGHTS OF THE PETITIONERS.

Analytically, this case is controlled by *Texaco Inc. v. Short* and *United States v. Locke*, 471 U.S. 84, 105 S. Ct. 1785, 85 L. Ed. 2d 64 (1985).

(Cont'd)

Statutory Notes, Constitution Ancillaries, Const. 1921, art. 16, sec. 6 (West 1996) (Pursuant to the statutory revision authority of the Louisiana State Law Institute, La. Const. Of 1921, art. 16, § 6 is no longer set forth as live text and is noted to be 'repealed by implication.' ")).

Petitioners contend that the Louisiana Supreme Court decision in this case unconstitutionally deprived them of a remedy[12] for the

12. For many years, Louisiana afforded no compensation whatsoever for the exercise of the levee servitude. *DeSambourg*, 621 So. 2d at 607-608. *Eldridge v. Trezevant* expressly held that such takings did not offend the United States Constitution. *Eldridge*, 160 U.S. at 468-469, 16 S. Ct. at 349. This practice first began to change in the late nineteenth century with regard to property in Orleans Parish; it subsequently changed statewide by virtue of the Louisiana Constitution of 1921, article 16, § 6, which in pertinent part provided for the payment of compensation " 'at a price not to exceed the assessed value of the preceding year' " with regard to " '[l]ands and improvements thereon actually used or destroyed for levees or levee drainage purposes.' " *DeSambourg*, 621 So. 2d, at 608 n.12. A new state constitution in 1974 launched the State on a major reform of the compensation payable to owners of riparian land taken for levee purposes by enabling the Legislature to increase the compensation payable "from 'assessed value' to 'fair market value to the full extent of the loss,' " which the Legislature eventually did by enacting Acts 314 of 1978 and 676 of 1979. App. to Pet. for Cert. A13-A14; *Wynat*, 710 So. 2d at 788. Section 10(C) of Article 12 of the Constitution of 1974 further ordered the Legislature to enact a set of procedures for suits against the State, in part because the new Constitution abolished the State's existing sovereign immunity and there would soon be a multitude of suits against the State pursuant to the new waiver of immunity. LSA-Const. Art. 12, § 10(C). The new Constitution became effective on January 1, 1975. *Terrebonne v. South Lafourche Tidal Control*, 445 So. 2d 1221 (La. 1984). Act 434 of 1975, the legislation that enacted the statute of limitations that eventually prompted the dismissal of the present suit for compensation, emanated from the first session of the Legislature following the adoption of the new Constitution. Act 434's preamble explained that the bill was intended

> [t]o amend and reenact Part XV of Chapter 32 of Title 13 of the Louisiana Revised Statutes of 1950, comprised of R.S. 13:5101 through R.S. 13:5111, relative to suits against the state, state agencies, or political subdivisions.

Acts 1975, No. 434. *See* LSA-R.S. 13:5101 (West 1991) (Historical and Statutory Notes). Among those provisions was § 5111(A), which in pertinent

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Levee District's appropriation by: (a) invalidating a long standing law after the taking had occurred; (b) announcing a repeal of an old law by implication, thus disturbing a vested property right; (c) legislating a new law by court decision and applying it retroactively in derogation of a vested property right; and (d) depriving petitioners of fair notice, i.e., due process of law. *See* Pet. for Cert. 12, 13, 14, 18 & 20.

In actuality, the entirety of the argument can be summed up as a lament that the petitioners did not know, and in the exercise of reasonable diligence could not have known, that La. R.S. 13:5111 provided the applicable rule of decision with regard to prescription in this case until the Louisiana Supreme Court decided that it did eleven (11) years after petitioners filed their suit. Pet. for Cert. 16. (". . . petitioner's counsel was without precedent or legal authority to declare [La. R.S. 9:5626] dead.") Considering the absence of a jurisprudential statement to the contrary and the additional absence of an explicit statement by the Legislature that La. R.S. 13:5111 was intended to repeal La. R.S. 9:5626, petitioners insist that the Louisiana Supreme Court decision in this case amounted to an "ex-post facto invalidation of La. R.S. 9:5626 [which] constituted new law and should not be applied retroactively . . ." Pet for Cert. 17-18.

This argument founders upon the fact "[e]very case of first impression has a retroactive effect . . .", *Securities and Exchange Commission v. Chenery Corp.*, 332 U.S. 194, 203, 67 S. Ct. 1575, 1581, 91 L. Ed. 1995 (1947). That quality alone hardly justifies a conclusion that retroactive application of the new standard "is . . . the type of retroactivity which is condemned by law," however. *See id.*

(Cont'd)
part read: "Actions for compensation for property taken by the state. . . or other political subdivision shall prescribe three years from the date of such taking."

The Louisiana Supreme Court decision in this case "merely construed § [5111], in accordance with the clear language of the statute . . ." *United States v. Estate of Donnelly*, 397 U.S. 286, 293, 90 S. Ct. 1033, 1037, 25 L. Ed. 2d 312 (1970). As discussed below in connection with the corresponding rule of state law that a decision construing statutory language operates both prospectively and retroactively, the rule in this Court appears quite uniformly to be that "parties[ ] [are] entitled to adhere to what [they] believe[ ] to be the correct interpretation of a statute, and to reap the benefits of that adherence if it proves to be correct, except where bound to the contrary by a final judgment in a particular case." *See id.* at 294, 90 S. Ct. at 1038. *See also Simpson v. Union Oil Co. of California*, 396 U.S. 13, 14, 90 S. Ct. 30, 31, 24 L. Ed. 2d 13 (1969) ("Formulation of a rule of law in an Article III case or controversy which is prospective as to the parties involved in the immediate litigation would be most unusual, especially where the rule announced was not innovative."); *Solem v. Stumes*, 465 U.S. 638, 642, 104 S. Ct. 1338, 1341, 79 L. Ed. 2d 579 (1984) ("As a rule, judicial decisions apply 'retroactively.' ") (Citation omitted)); *Cf. Saint Francis College v. Al-Khazraji*, 481 U.S. 604, 107 S. Ct. 2022, 95 L. Ed. 2d (1987) (noting limits on retroactive application of decision concerning statute of limitations when decision overrules clearly established precedent).[13]

The rule the Louisiana Supreme Court announced in this case was hardly innovative. Once again, La. R.S. 13:5111 was enacted eight years before the Levee District appropriated petitioners' property, and petitioners were charged, not only with knowledge of the statute, *i.e.*, La. R.S. 13:5111, but with: (a) knowledge of the statute's title, which encompassed "[a]ppropriation"; and (b)

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13. There is nothing comparable to the concern that prompted this limitation on the retroactive application of a statute of limitations decision in the instant petition. The matter was *res nova* in Louisiana before the current litigation. *Cf.* Pet. for Cert. 16 n.8 (mentioning *dissent* in 1993 Louisiana Supreme Court case).

knowledge that appropriation pertains to the taking of a servitude. LSA-R.S. 13:5111 (West 1991); *Texaco, Inc.*, 454 U.S. at 533, 102 S. Ct. at 793 n.25. (constructive knowledge of statutes extends " 'especially to those statutes relating to the . . . condemnation of land.' ")

In the Louisiana Supreme Court, Wynat essentially argued that such knowledge would have produced irrational consequences and that it should therefore not be faulted for having dismissed § 5111 as the rule of decision. Wynat urged that whereas a suit under § 5626 would necessarily be timely and ripe because no action could accrue under § 5626 until the levee work was complete, a timely suit under § 5111 could well be premature if the work was not complete and the landowner's damages were correspondingly unclear. *Wynat,* 710 So. 2d at 790-791.

Treating this as an argument that the decision below was unexpected and thus innovative in the *Simpson* sense, it is worth noting that the argument conveniently ignored the language of the statute on which Wynat relied for a broad remedy, namely, LSA-R.S. 38:301 (West 1998). That statute, which enables a landowner to receive fair market value compensation to the full extent of his or her loss, further confers on the owner the right to assess damages *in futuro*, by "taking into consideration the effects of the completion of the project in the manner *proposed or planned*." LSA-R.S. 38:301(C)(1)(b) (West 1988) (emphasis added).[14] Thus, Wynat had every opportunity to file a timely action in this case, even if every item of damage had not yet physically materialized. Expert testimony would have been admissible under the statute to prove those future damages. *See Wynat,* 710 So. 2d at 790-791 (for, *inter alia*, reasons just stated, landowner's right to enforce levee district's obligation and to obtain judgment

14. This statute was enacted prior to the taking in this case. *See id.* (Historical and Statutory Notes). *See also Wynat*, 710 So. 2d at 788-789 (§ 301 is reenactment of La. R.S. 38:281, enacted by Act 314 of 1978, and amended as to Orleans Levee District by Act 676 of 1979).

awarding damages accrues with passage of appropriating resolution). Moreover, even under the statute that extinguished Wynat's remedy, La. R.S. 13:5111, eight months for timely action remained when the Corps completed its work.[15]

For all of these reasons, there is as much justification in this case as there was in *Texaco* for saying:

> 'What right has anyone to complain, when a reasonable time has been given him, if he has not been vigilant in asserting his rights.'

Texaco, Inc., supra, 454 U.S. at 526, 102 S. Ct. at 290 (citation omitted).[16]

In other words, the response to the takings claim of the petitioners is that this Court does not "require[] the State to compensate the owner for the consequences of his own neglect." *Id.*, 454 U.S. at 531, 102 S. Ct. at 792.

The crux of the petition in this case is nonetheless the claim that the petitioners had no notice that La. R.S. 13:5111 superseded La. R.S. 9:5626 until the Supreme Court handed down its decision in this proceeding, as stated earlier. *See* Pet. for Cert. 19.

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15. Work was finally completed in December of 1985. Pet. for Cert. 8. Petitioners received, they concede, notice of the appropriation in August of 1983, as stated earlier. Hence, prescription commenced in August of 1983. LSA-R.S. 13:5111 (West 1991); *Rivet v. State, supra*. The prescriptive period would therefore not have expired until August of 1986, or some eight months after the completion of the work in December of 1985.

16. As a matter of fact, the case of the petitioners in this matter is less compelling than the one of the petitioners in *Texaco, Inc.* because quite a few of the appellants in *Texaco* acquired their mineral interests 20 years or more before the Indiana Legislature enacted the Dormant Mineral Interests Act. *Id.*, 454 U.S. at 522, 102 S. Ct. at 787. In the present case, in contrast, the Legislature enacted the new statute of limitations years before the taking occurred and thus years before the claim to compensation accrued or vested.

In *Texaco,* Justice Stevens' characterized such a challenge as one that concerns "how a legislature must go about advising its citizens of [the] actions that must be taken to avoid [the prejudicial effect] of a valid rule of law . . ." *Ibid.* Since "persons owning property within a State are charged with knowledge of relevant statutory provisions affecting the control or disposition of [their] property," *see id.* at 533, 102 S. Ct. at 781, *Texaco* indicates that it is generally sufficient for "a legislature . . . [to] enact and publish the law, and afford the citizenry a reasonable opportunity to familiarize itself with its terms and to comply." *Id.*, 454 U.S. at 533, 102 S. Ct. at 793. In *Texaco, Inc.,* the court specifically considered a "two year period", and deemed that sufficient. *Ibid.*

In the present case, it is undisputed that the petitioners had at least three years from the date of the appropriation to familiarize themselves with the substance of La. R.S. 13:5111. That is, presumably, also constitutionally sufficient.

II.

A COURT DECISION ANNOUNCING THE EFFECT OF A STATUTE ENACTED YEARS BEFORE A PROPERTY OWNER'S REMEDY BECAME VESTED IS NOT MADE IMPERMISSIBLY RETROACTIVE BY ITS PREJUDICIAL IMPACT ON THE LANDOWNER'S RIGHTS.

Petitioners insist on characterizing the Louisiana Supreme Court opinion in this case as one whose impact was impermissibly retroactive in a due process sense, as stated earlier. Pet. for Cert. 20. To the allegation of legally condemned retroactivity quoted earlier, one can add, for example, the following, curious assertion:

> In the instant case, the effective date of the repeal of La. R.S. 9:5626 and applicability of La. R.S. 13:5111,

> was April 14, 1998, the date the court rendered its decision holding same to be the law.

Pet. for Cert. 19.

This is simply not a correct statement of the law, either as a matter of state law or as a matter of constitutional principle. It was not the Louisiana Supreme Court but rather the Legislature of Louisiana that effected the repeal of La. R.S. 9:5626 by enacting section 3 of the Act, which explicitly repealed all laws or parts of laws inconsistent with the Act. The only thing the Louisiana Supreme Court did was implement the "intention to repeal" the Legislature avowed in section 3 of the Act. *Tennessee Valley Authority v. Hill*, 437 U.S. 153, 191, 28 S. Ct. 2279, 2299, 57 L. Ed. 2d 117 (1978) (citation omitted). *See also Eastern Extension, Australasia & China Telegraph Company v. United States*, 231 U.S. 326, 332, 34 S. Ct. 57, 58, 58 L. Ed. 250 (1913) (when statute repeals inconsistent enactments generally, "[t]he question is one of legislative intent.")

The intention to repeal section 5626 was furthermore apparent from the legislative history of Act 434 of 1975. As noted earlier in footnote 12, La. R.S. 13:5111 emerged from the Louisiana Constitution of 1974, which ordered the Legislature to "provide a procedure for suits against the state, a state agency, or a political subdivision." LSA-Const. Art. 12, § 10(C) (West 1996) (Historical Notes). Act 434's preamble — "an Act [t]o amend and reenact [laws] relative to suits against the state, state agencies, or political subdivisions" — showed that the Act was a direct response to the Convention's directive. LSA-R.S. 13:5101 (West 1991) (Historical and Statutory Notes). That was important because it illuminated the Legislature's intention to adopt one uniform statute of limitations for actions against the State with regard to takings other than by expropriation.

The Constitutional Convention had ordered procedures for suits against the State because the 1974 Constitution abrogated Louisiana's immunity from suits to which it did not consent. *Hamilton v. City of Shreveport,* 247 La. 784, 174 So. 2d 529 (1965). The Convention obviously anticipated that there would be a corresponding increase in the number of suits against the state, and that a uniform set of procedures for such suits would be desirable. *See also Chamberlain v. State Through Dept. of Transp. and Development*, 624 So. 2d 874 (La. 1993) (tracing history of sovereign immunity in Louisiana constitutions). It accordingly ordered the Legislature to adopt a suitable set of procedures, to which the Legislature reacted by enacting Act 434 of 1975. But it is also evident that in doing so, the Legislature determined that it would be advisable to adopt one uniform statute of limitations for any action against the state or one of its subdivisions for the taking of private property "other than through an expropriation proceeding." LSA-R.S. 13:5111(A) (West 1991).

Such a specific intention would have, for example, given the Legislature ample cause to repeal all laws or parts of laws inconsistent with the new Act. Acts 1975, No. 434, § 3 (attached). The appearance of the general repealer clause in the new legislation could easily be viewed as confirming that intention. In addition, however, the general repealer clause should have put everyone on notice of the fact that the Legislature wanted the new procedures to displace inconsistent existing procedures and that a commensurate level of caution would thenceforth be necessary with regard to the interpretation of Act 434.

In addition, since the preamble of Act 434 indicated that the Act was a reaction to the new Constitution's waiver of sovereign immunity; and since that waiver furnished the Legislature with substantial reason to expect a plethora of suits against the state for damage to property, there was corresponding reason to establish one uniform statute of limitations for such suits. Act 434 deserved to be interpreted accordingly.

Third, there was additional cause in the scope and breadth of the Act's terminology for surmising that the establishment of one uniform statute of limitations was the Legislature's objective. Section 5101 of the Act stated, for example, that the Act applied to "*any* suit . . . for injury . . . to property against the state, or a political subdivision of the state, as defined herein . . ." *See id.* at § 5101 (emphasis added). Section 5102(B) of the Act defined the state and its subdivisions in the broadest possible terms, more broadly, certainly, than the earlier legislation. Likewise, § 5111 swept very broadly, covering "the state, a parish, municipality, or other political subdivision or any one of their respective agencies."

In contrast, La. R.S. 9:5626 applied solely to actions for lands appropriated for levee purposes. Additionally, it harkened back to a bygone era of different rights and relationships between the state and its people, one overtaken by seminal, legal changes initiated by the Constitution of 1974. Section 5626 was specifically tailored to a provision of the Constitution of 1921 that stood, in that era, as an exception to the general immunity of the state against suits for damages. *See* LSA-Const. 1921, Art. III, § 35 (West 1977) (Early Constitutions) (setting forth immunity of state). *See also Hamilton, supra.* The precise legislative history of La. R.S. 9:5626 is that § 5626 was enacted to fill a gap in legislation as to when an action under Article XVI, § 6 of the 1921 Constitution would prescribe. It was explained in *A.K. Roy, Inc. v. Board of Commissioners,* 237 La. 541, 111 So. 2d 765, 767 n.9 (1959), that prior to the adoption of La. R.S. 9:5626, the law was unclear regarding when such actions prescribed.

There is no indication that the Legislature intended anything more with La. R.S. 9:5626 than to provide a prescriptive period for actions against the state under Article XVI, § 6, of the Constitution of 1921. As has already been observed, however, this suit was never filed on that basis. It was therefore specious for petitioners to maintain that their reliance on § 5626 was reasonable: (a) when article XVI was discontinued five years before the

appropriation of their property; (b) when they therefore chose to pursue the new and more profitable remedy for appropriation which replaced article XVI, La. R.S. 38:301; and (c) when they are deemed to have known that the later statute covering the same limitations subject-matter, without the antiquated language, commenced prescription in a markedly different way. *See* App. to Pet. for Cert. A15 ("Wynat has, in fact, asserted a cause of action under this new compensation scheme found in La. R.S. 38:301; not one under art. 16, § 6 of the 1921 Constitution.")

Wynat's contention that it was not apparent that § 5626 was repealed by La. R.S. 13:5111 until the Louisiana Supreme Court opinion in this case is therefore without merit.

Furthermore, even if one assumes that the repeal of La. R.S. 9:5626 did not become truly apparent until the Legislature abrogated art. 16, § 6 of the 1921 Constitution by enacting Act 314 of 1978, *see* App. to Pet. for Cert. A13, petitioners did not have a constitutional right to have the repeal explained to them. To the contrary, as Justice Stevens remarked in *Texaco*, "it has never been suggested that each citizen must in some way be given specific notice of the impact of a new statute on his property before the law may affect his property rights." *Texaco, Inc.*, 454 U.S. at 537, 102 S. Ct. at 795-796.

For its part, Louisiana law does not equate the interpretation of statutory language with the creation of new law; a decision that construes statutory language therefore operates on existing cases as a matter of state law. *Tugwell v. State Farm Ins. Co.*, 609 So. 2d 195 (La. 1992). This is a view that is shared by this court. *See, e.g., Estate of Donnelly*, 397 U.S. at 293, 90 S. Ct. at 1037 (decision construing statute in accordance with its language binds litigants in pending case absent prior final judgment to contrary).

There is therefore no merit to the argument that the due process rights of the petitioners have been violated by the retroactive application of a law of which they had no notice. They assail a statute that was enacted years *before* their cause of action vested. Petitioners were charged with knowledge of that statute, and they are regarded by the law as having had years to study its implications. There was certainly reason to wonder whether La. R.S. 9:5626 had any continuing vitality after the Legislature abrogated the prior assessed value scheme of compensation in 1978, but there was also earlier reason to wonder about the vitality of § 5626. *See, e.g.,* footnote 11, *supra.*

CONCLUSION

The petition in this case is controlled by *Texaco,* and what *Locke* said of *Texaco* is equally apropos here:

> "this Court has never required [the State] to compensate [a property] owner for the consequences of his own neglect." 454 U.S. at 530, 102 S. Ct. at 792. [Petitioners] failed to inform themselves of the proper filing deadline and failed to file in timely fashion . . . Their property loss was one [they] could have avoided with minimal burden; it was their failure to file on time — not the action of [the state] — that caused the property right to be extinguished. Regulation of property rights does not "take" private property when an individual's reasonable, investment-backed expectations can continue to be realized as long as he complies with reasonable regulatory restrictions the legislature has imposed.

Locke, 471 U.S. at 108, 105 S. Ct. at 1799.

Respondent, Board of Commissioners of the Orleans Levee District, therefore respectfully prays for denial of the petition for certiorari herein.

Respectfully submitted,

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APPENDIX

APPENDIX A — ACTS 1975, NO. 434; LSA-R.S. 13:5101 (WEST 1991) (HISTORICAL AND STATUTORY NOTES; LSA-R.S. 13:5111 (WEST 1991) (HISTORICAL AND STATUTORY NOTES)

ACT No. 434

House Bill No. 1623. By: Mr. Casey (Introduced pursuant to H. C. R. No. 133).

AN ACT

To amend and reenact Part XV of Chapter 32 of Title 13 of the Louisiana Revised Statutes of 1950, comprised of R.S. 13:5101 through R.S. 13:5111, relative to suits against the state, state agencies, or political subdivisions.

Be it enacted by the Legislature of Louisiana:

Section 1. Part XV of Chapter 32 of Title 13 of the Louisiana Revised Statutes of 1950, comprised of R.S. 13:5101 through R.S. 13:5111, is hereby amended and reenacted to read as follows:

PART XV. SUITS AGAINST STATE, STATE AGENCIES, OR POLITICAL SUBDIVISIONS

§5101. Application

This Part applies to any suit in contract or for injury to person or property against the state, a state agency, or a political subdivision of the state, as defined herein, and also applies to any other suit expressly authorized by special or general law or resolution adopted by the legislature.

Appendix A

§5102. Definitions

A. As used in this Part, "state agency" means any board, commission, department, agency, special district, authority, or other entity of the state, but does not include any political subdivision or any agency of a political subdivision.

B. As the term is used in this Part, "political subdivision" means any parish, municipality, special district, school board, public board, institution, department, commission, district, corporation, agency, authority, or an agency or subdivision of any of these, and other public or governmental body of any kind which is not a state agency.

§5103. Determination of procedural questions

All procedural questions arising in suits on claims against the state, state agencies, or political subdivisions shall be determined, except as the contrary is specified in this Part, in accordance with the rules of law applicable to suits between private parties.

§5104. Venue

A. All suits filed against the state of Louisiana or any state agency may be instituted before the district court of (the judicial district in which the state capitol is located or in the district court having jurisdiction in the parish in which the cause of action arises.

B. All suits filed against a political subdivision of the state may be instituted before the district court of the judicial district

in which the political subdivision is located or in the district court having jurisdiction in the parish in which the cause arises.

§5105. Jury trial prohibited

No suit against the state or a state agency or political subdivision shall be tried by jury.

§5106. Limitation

No suit against the state, state agency, or political subdivision shall be instituted in any court other than a Louisiana state court.

§5107. Service of citation and process

In all suits filed against the state of Louisiana or a state agency or political subdivision of the state, citation and service may be obtained by citation and service on the attorney general of Louisiana, or on any employee in his office above the age of sixteen years, or on a district, attorney or a city attorney or any other proper officer or person, depending upon the identity of the named defendant and in accordance with the laws of this state, and on the department, board, commission, or agency head or person, depending upon the identity of the named defendant and in accordance with the laws of this state, and on the department, board, commission, or agency head or person, depending upon the identity of the named defendant and the identity of the named board, commission, department, agency, or officer through which or through whom suit is to be filed against.

Appendix A

§5108. Prescription, immunity; pleas

The defendant in any suit filed against the state of Louisiana, a state agency or a political subdivision of the state shall not be entitled to file a plea of prescription or peremption barring such suit or the liability of the entity instituting the suit if the suit in contract or for injury to person or property is filed within the time fixed by law for such suits against private persons, or in other suits authorized by the legislature if the suit is filed within one year after the date on which the resolution authorizing it was adopted or within one year after the date on which the law authorizing it becomes effective.

§5109. Authority to compromise; judgments; payment

A. In any suit filed against the state of Louisiana, state agency, or a political subdivision, the defendant, or the proper representative thereof, upon the advice and with the concurrence of the attorney general, district attorney, city attorney, or other proper official, as the case may be, may compromise and settle the claims presented in any such suit.

B. Any judgment rendered in any suit filed against the state, a state agency, or a political subdivision, or any compromise reached in favor of the plaintiff or plaintiffs in any such suit shall be exigible, payable, and paid only out of funds appropriated for that purpose by the legislature, if the suit was filed against the state or a state agency, or out of funds appropriated for that purpose by the named political subdivision, if the suit was filed against a political subdivision.

Appendix A

§5110. Suits and proceedings exempt

This Part shall not apply to suits for refund of taxes or for workmen's compensation benefits, or to proceedings for garnishment of wages, or to suits or mandamus proceedings against the division of public health statistics, vital statistics, of the division of public health of the Louisiana Health and Human Resources Administration, all of which shall continue to be governed by the laws applicable thereto.

§5111. Appropriation of property by state, parish, municipality, or agencies thereof; attorney, engineering and appraisal fees; prescription

A. A court of Louisiana rendering a judgment for the plaintiff, in a proceeding brought against the state of Louisiana, a parish, or municipality or other political subdivision or an agency of any of them, for compensation for the taking of property by the defendant, other than through an expropriation proceeding, shall determine and award to the plaintiff, as a part of the costs of court, such sum as will, in the opinion of the court, compensate for reasonable attorney fees actually incurred because of such proceeding. Any settlement of such claim, not reduced to judgment, shall include such reasonable attorney, engineering, and appraisal fees as are actually incurred because of such proceeding. Actions for compensation for property taken by the state, a parish, municipality, or other political subdivision or any one of their respective agencies shall prescribe three years from the date of such taking.

B. The rights of the landowner herein fixed are in addition to any other rights he may have under the constitution of Louisiana and existing statutes, and nothing in this Part shall

impair any constitutional or statutory rights belonging to any person on the effective date of this Part.

Section 2. If any provision or item of this Act or the application thereof is held invalid, such invalidity shall not affect other provisions, items or applications of this Act which can be given effect without the invalid provisions, items or applications, and to this end the provisions of this Act are hereby declared severable.

Section 3. All laws or parts of laws in conflict herewith are hereby repealed.

Approved by the Governor: July 17, 1975.

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A true copy:

WADE O. MARTIN, JR.
Secretary of State.